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9 UNITED STATES DISTRICT COURT FOR THE
10 NORTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,)	
)	Civil Number: 3:23-mc-80029-JCS
12 Petitioner,)	
)	
13 v.)	UNITED STATES' RESPONSE TO
)	PAYWARD VENTURES, INC.'S
14 PAYWARD VENTURES INC., d/b/a)	AMENDED ADMINISTRATIVE
15 KRAKEN OR KRAKEN.COM, OR ITS)	MOTION TO FILE UNDER SEAL
16 PREDECESSORS, SUBSIDIARIES,)	PORTIONS OF ITS OPPOSITION TO
DIVISIONS, OR AFFILIATES,)	PETITION TO ENFORCE INTERNAL
)	REVENUE SERVICE SUMMONS AND
17 Respondent.)	SUPPORTING DECLARATION

18 Payward Ventures, Inc. ("Kraken") has filed an amended administrative motion to file under seal
19 portions of its opposition and the supporting declaration of Todd Siemers. (ECF No. 19). Kraken's
20 amended motion should be denied for the same reasons as its belated initial motion.

21 Although the newly proposed and less redacted versions of Kraken's opposition and supporting
22 declaration of Todd Siemers are an improvement over its first versions, they still suffer the same fatal
23 flaw. That is, that the material Kraken seeks to keep out of the public record fails to meet the standard
24 in this Court for sealing because none of it should be considered confidential and proprietary business
25 information. *See Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006) (a
26 party seeking to seal a judicial record bears the burden of meeting the "compelling reasons" standard,
27 and sealing decisions cannot rest on "hypothesis or conjecture") (citations omitted). Kraken's amended
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1 motion continues to assert that the redacted information reveals sensitive details of its IT processes and
2 the manner and method of its data storage. But even in the lesser redacted versions, there is no such
3 detail. Consistent with the representations Kraken makes on its own website (EDF No. 19 at 3-5), the
4 public would expect that Kraken maintains a data storage system for the user data it collects. The fact
5 that it does what it says it will do on its website is fatal to its argument that the redacted information is
6 confidential or proprietary. Also fatal is Kraken's failure to submit a declaration from a competent
7 witness to prove that the revised redactions are confidential or proprietary. Kraken's legal counsel's
8 "understanding" is not sufficient. Fed R. Evid. 602.

9 In sum, Kraken still fails to show a "compelling reason" sufficient to outweigh the public's
10 interest in disclosure and open access to the information. *Kamakana*, 447 F.3d at 1178-1179; *Williams v.*
11 *Apple, Inc.*, No. 19-CV-04700-LHK, 2021 WL 2476916 (N.D. Cal. June 17, 2021) (denying Apple's
12 request to seal as to server information regarding iCloud data storage for lack of compelling reasons,
13 noting that Apple had "publicly admitted to using third party servers"). For the foregoing reasons and
14 those articulated in the United States' initial response (ECF No. 18), the Court should deny the amended
15 administrative motion to seal, and Kraken's redacted documents should be stricken from the docket and
16 refiled unredacted.

17 Dated this 3rd day of May, 2023.

18 DAVID A. HUBBERT
19 Deputy Assistant Attorney General

20 /s/ Amy Matchison
21 AMY MATCHISON
22 Trial Attorney, Tax Division
23 U.S. Department of Justice
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